IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 922 of 2006

Date of decision: 16.10.2006

State of Haryana and others

..... Petitioners.

Versus

Udey Singh

..... Respondent.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. Ashish Kapoor, Addl. A.G. Haryana

Mr. Akshay Bhan, Advocate
for respondent No.1.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed by the State of Haryana aggrieved by the judgment dated 10.04.2002 whereby the learned Civil Judge (Junior Division), Sirsa set aside the award made by Mr. J.C. Yadav, Arbitrator and judgment dated 05.11.2005 passed by learned Additional District Judge, Sirsa whereby appeal filed by the State of Haryana against the order of learned trial Court has been dismissed. The Arbitrator had rejected the claim filed by the respondent-objector a contractor with the State of Haryana for interest on delayed payment due to him for the work executed by him.

A reading of the judgment of the trial Court would show that it was the admitted position between the parties that a total sum of Rs.27,434/- was due to the petitioner for the work which was completed by the petitioner in the year 1983. This amount was ultimately released by the State in the year 1994 after more than 11 years. The contention of the State Government was that the amount which was the balance payable for execution of the work could not be released as no final bill had been submitted by the petitioner.

On the other hand, the petitioner's contention was that he had submitted a final bill on 28.07.1983. There was an endorsement in the measurement book of the department in this regard. Still further he contended that even if it is assumed that he did not submit the final bill even then the final payment should have been released on the basis of a certificate issued by the Engineer-in-Charge for the total amount payable for the work done which as per the Contract was to be final and binding on all the parties. After examining this issue, the trial Court has held as hereunder:-

> "It is the admitted fact of the parties that the payment has been made after about 11/11-1/2 years. There is a dispute regarding the submission of bills. The petitioner has established with oral as well as documentary evidence coming from the department itself that the bill was submitted on 28.07.1983. There is an endorsement in the measurement book of the department in this regard. Even otherwise, the late submission of bill itself is no

ground to delay the payment especially in the light of the Clause 7 of the Contract itself that the final bill shall be submitted by the contractor within one month of the date fixed for the completion of work, otherwise the Engineer-in-Charge's certificate of the measurement and of total amount payable for the work according shall be final and binding on all parties. It has also been established in this case that the measurement was duly effective on 28.07.1983 and there is an entry in the measurement book of the department itself. But this fact has been overlooked by the Arbitrator. Further in the Clause 38(a) it has been prescribed in the agreement that if the final bill of a contractor is likely to be for a plus amount 75% of the security deposit will be release after three months of taking the final measurement. In the instant case, 75% of the security deposit was released that clearly reflects that the bill was likely to be for a plus amount. This factum of payment could have been established with the production of record by the defendant/respondents. DW1, who happens to be the SDO of the concerned department was directed to bring the record but on a false pretext that the same was lying in the office of Xen and even on his approach the record was not produced by him. The respondents have withheld the record intentionally and for that an adverse inference is being taken against them."

A reading of the portion extracted above would show that firstly the trial Court has found that the SDO of the concerned department, who was to bring the record did not do so on a pretext which was held to be false. Still further it is found that prima facie the petitioner had satisfied the Court that he had submitted final bill in July 1983 and even if the final bill had not been submitted payment should have been made on the basis of a certificate issued by Engineer-in-Charge. Thus the Court concluded that there was no justification for the delay of 11 years in making the payment. I find no error in the view taken by the Courts below holding that the petitioner in the objection petition was entitled to the grant of interest on the delayed payment.

Learned counsel for the petitioner however states that in the present case, the Courts have awarded the payment to the respondent/objector with interest @ 18% per annum and that too compounded. He submits that firstly this was not a case where compound interest should have been granted. Secondly the rate of interest could not have been more than 6% per annum even as per the Interest Act,1978.

As against this, learned counsel for the respondent could not raise any meaningful argument to justify the grant of compound interest. He however submits that the rate of interest awarded by the Court was reasonable in the facts and circumstances of the case.

After hearing learned counsel for the parties, I am of the opinion that the interest granted by the Courts below on the basis of application made by the respondent/objector is excessive. In my opinion the respondent-objector is held entitled to simple interest @ 9% per annum

on the delayed payment from July 1983, when the final bill, as per the trial Court, was submitted up to the date when the payment was ultimately made.

The present revision petition is disposed of in the aforesaid terms.

October 16, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**